



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0893/P1

GMM:cjs:md

IN 419  
Wanted We 2 4/15

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reprint

1 **AN ACT to renumber and amend** 54.56, 54.57 and 808.075 (4) (f) 3.; **to amend**  
2 48.02 (8), 48.023 (intro.), 48.023 (3), 48.023 (4), 48.09 (5), 48.14 (2) (b), 48.14 (11),  
3 48.185 (1), 48.235 (1) (c), 48.299 (4) (a), 48.299 (4) (b), 48.345 (intro.), 48.368 (1),  
4 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (8), 48.978 (7), 51.30 (4) (b) 18. a.,  
5 51.30 (4) (b) 18. c., 54.01 (10), 54.10 (1), 54.52 (1), 55.03 (1), 115.76 (12) (b) 2.,  
6 146.82 (2) (a) 9. a., 146.82 (2) (a) 9. c., 757.69 (1m) (e), 808.075 (4) (a) 11., 814.66  
7 (1) (m), 938.02 (8) and 938.345 (1) (e); and **to create** 48.14 (2m), 48.235 (3) (c),  
8 48.976, 48.979, 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the statutes;  
9 **relating to:** guardianships of children.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be supplied when the draft is ready for introduction.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

under s. 48.023

SECTION 1. 48.02 (8) of the statutes is amended to read:

48.02 (8) "Guardian" means the person named by the court having the duty and authority of ~~guardianship~~ guardian of the person of a child.

SECTION 2. 48.023 (intro.) of the statutes is amended to read:

**48.023 Guardianship.** (intro.) Except as limited by an order of the court under s. 48.976 (2) (c) 2., 48.977 (5) (b), or 48.978 (6) (b) 2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including ~~but not limited to~~ all of the following:

of a court of competent jurisdiction, the authority

SECTION 3. 48.023 (3) of the statutes is amended to read:

48.023 (3) The right and duty of reasonable visitation ~~of with the child and, subject to an order under s. 48.355 (3) (b), 48.42 (1m) (e), 48.428 (6), 48.976 (11) or (12), 48.925 (1m), 767.43 (6), 767.44 (1), or 938.355 (3) (b) to determine~~ visitation with the child.

permit reasonable

SECTION 4. 48.023 (4) of the statutes is amended to read:

48.023 (4) The rights and responsibilities of physical custody and legal custody, including the right to change the residence of the child from this state to another state, except when physical custody or legal custody has been vested in another person or when the child is under the supervision of the department of corrections under s. 938.183, 938.34 (4h), (4m) or (4n), or 938.357 (4) or the supervision of a county department under s. 938.34 (4d) or (4n).

SECTION 5. 48.09 (5) of the statutes is amended to read:

48.09 (5) By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,

1 48.976, or 48.977. If the county board transfers this authority to or from the district  
2 attorney on or after May 11, 1990, the board may do so only if the action is effective  
3 on September 1 of an odd-numbered year and the board notifies the department of  
4 administration of that change by January 1 of that odd-numbered year.

5 **SECTION 6.** 48.14 (2) (b) of the statutes is amended to read:

6 48.14 (2) (b) The appointment and removal of a guardian of the person for a  
7 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977,  
8 and 48.978 and ~~ch. 54~~ and for a child found to be in need of protection or services  
9 under s. 48.13 because the child is without parent or guardian.

10 ~~**SECTION 7.** 48.14 (2m) of the statutes is created to read:~~

11 ~~48.14 (2m) The receipt and acceptance of a foreign guardianship, except as~~  
12 ~~provided in s. 48.976 (6) (d), and, if the foreign guardianship is received and accepted,~~  
13 ~~over the accepted guardianship.~~

14 **SECTION 8.** 48.14 (11) of the statutes is amended to read:

15 48.14 (11) Granting visitation privileges under s. 54.56 48.976 (11).

16 ~~**SECTION 9.** 48.185 (1) of the statutes is amended to read:~~

17 ~~48.185 (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.133,~~  
18 ~~48.135 and, or 48.14 (1) to (9) or (11) may be in any of the following: the county where~~  
19 ~~the child or the expectant mother of the unborn child resides or the county where the~~  
20 ~~child or expectant mother is present. Venue for proceedings brought under subch.~~  
21 ~~VIII is as provided in this subsection except where the child has been placed and is~~  
22 ~~living outside the home of the child's parent pursuant to a dispositional order, in~~  
23 ~~which case venue is as provided in sub. (2). Venue for a proceeding under s. 48.14~~  
24 ~~(2m) is as provided in this subsection or may be in the county where the foreign~~

~~guardian intends the foreign ward to reside.~~ Venue for a proceeding under s. 48.14 (10) is as provided in s. 801.50 (5s).

**SECTION 10.** 48.235 (1) (c) of the statutes is amended to read:

48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

**SECTION 11.** 48.235 (3) (c) of the statutes is created to read:

48.235 (3) (c) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. 48.976 shall do all of the following unless granted leave by the court not to do so: *§ assess the appropriateness and safety of the environment of the child*

1. Personally, or through a trained designee, meet with the child and, if ~~the child is old enough to communicate, interview the child, explain the contents of the petition and the applicable hearing procedure to the child, and advise the child of the child's rights to counsel, to be present at the hearing, to a jury trial, and to an appeal.~~

2. Interview the proposed guardian, ~~notify the proposed guardian of the right to be present at and to participate in the hearing and to present and cross-examine witnesses, notify the proposed guardian of his or her duty to submit the statement under s. 48.976 (3) (d), and report to the court concerning the suitability of the proposed guardian to serve as guardian.~~

3. Attend all court proceedings related to the guardianship, present evidence concerning the best interests of the child, if necessary, and make clear and specific recommendations to the court concerning the best interests of the child at every stage of the proceeding.

*personally, or through a trained designee, visit the guardian's home*

*appropriate to the age and developmental level of the child, interview the child and determine the child's goals and concerns regarding the proposed guardianship*

1           4. Report to the court on any matter that the court requests.

2           **SECTION 12.** 48.299 (4) (a) of the statutes is amended to read:

3           48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at  
4 the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978  
5 (2) (e) and (3) (f) 2.

6           **SECTION 13.** 48.299 (4) (b) of the statutes is amended to read:

7           48.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
8 statutory rules of evidence are binding at a hearing for a child held in custody under  
9 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a  
10 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing  
11 about changes in placement, revision of dispositional orders, extension of  
12 dispositional orders or termination of guardianship orders entered under s. 48.976,  
13 48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall  
14 admit all testimony having reasonable probative value, but shall exclude  
15 immaterial, irrelevant or unduly repetitious testimony or evidence that is  
16 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has  
17 demonstrable circumstantial guarantees of trustworthiness. The court shall give  
18 effect to the rules of privilege recognized by law. The court shall apply the basic  
19 principles of relevancy, materiality and probative value to proof of all questions of  
20 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may  
21 be made and shall be noted in the record.

22           **SECTION 14.** 48.345 (intro.) of the statutes is amended to read:

23           **48.345 Disposition of child or unborn child of child expectant mother**  
24 **adjudged in need of protection or services.** (intro.) If the judge finds that the  
25 child is in need of protection or services or that the unborn child of a child expectant

1 mother is in need of protection or services, the judge shall enter an order deciding one  
2 or more of the dispositions of the case as provided in this section under a care and  
3 treatment plan, except that the order may not place any child not specifically found  
4 under this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled,  
5 mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that  
6 exclusively ~~treat~~ treats those categories of children, and the court may not place any  
7 child expectant mother of an unborn child in need of protection or services outside  
8 of the child expectant mother's home unless the court finds that the child expectant  
9 mother is refusing or has refused to accept any alcohol or other drug abuse services  
10 offered to her or is not making or has not made a good faith effort to participate in  
11 any alcohol or other drug abuse services offered to her. The dispositions under this  
12 section are as follows:

13 **SECTION 15.** 48.368 (1) of the statutes is amended to read:

14 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41  
15 or 48.415 or an appeal from a judgment terminating or denying termination of  
16 parental rights is filed during the year in which a dispositional order under s. 48.355,  
17 an extension order under s. 48.365, a voluntary agreement for placement of the child  
18 under s. 48.63, or a guardianship order under ch. 54, 2007 stats., or ch. 880, 2003  
19 stats., or s. 48.976 or 48.977 ~~or ch. 54~~ is in effect, the dispositional or extension order,  
20 voluntary agreement, or guardianship order shall remain in effect until all  
21 proceedings related to the filing of the petition or an appeal are concluded.

22 **SECTION 16.** 48.62 (2) of the statutes is amended to read:

23 48.62 (2) A relative~~;~~, or a guardian of a child who provides care and  
24 maintenance for the child is not required to obtain the license specified in this  
25 section. The department, county department, or licensed child welfare agency as

provided in s. 48.75 may issue a license to operate a foster home or a treatment foster home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster home or treatment foster home for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63. The department, a county department, or a licensed child welfare agency may, at the request of a guardian appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the guardian's home as a foster home or treatment foster home for the guardian's minor ward who is living in the home and who is placed in the home by court order. Relatives with no duty of support and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., who are licensed to operate foster homes or treatment foster homes are subject to the department's licensing rules.

**SECTION 17.** 48.831 (1) of the statutes is amended to read:

48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of a child who does not have a living parent if a finding as to the adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~ s. 48.976 applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. An appointment of a guardian of the estate of a child who does not have a living parent shall be conducted in accordance with the procedures specified in ch. 54. 48.976 (9) ✓

**SECTION 18.** 48.831 (1m) (e) of the statutes is amended to read:

48.831 (1m) (e) A guardian appointed under s. 48.976, ch. 54, 2007 stats., or ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court under s. ~~48.986 (10)~~ 54.54 (1), 2007 stats., or s. 880.17 (1), 2003 stats.

**SECTION 19.** 48.976 of the statutes is created to read:

(a) "Indian child" has the meaning given in 25 USC 1903 (4).

(b) "Indian child's tribe" has the meaning given in 25 USC 1903 (5).

(c) "Indian custodian" has the meaning given in 25 USC 1903 (6).

# 48.976 Appointment of guardian of the person of a child. (1)

## DEFINITIONS. In this section:

(d) "Interested person" means any of the following:

of a child

1. For purposes of a petition for guardianship, any of the following:

a. The ~~proposed ward~~ <sup>child</sup>, if he or she has attained 12 years of age.

b. The parents of the ~~proposed ward~~ <sup>child</sup>.

c. Any individual who is nominated as guardian and any individual who is appointed to act as guardian or fiduciary for the ~~proposed ward~~ <sup>child</sup> by a court of any state.

d. The individual who has exercised principal responsibility for the care and custody of the ~~proposed ward~~ <sup>child</sup> during the period of 60 consecutive days immediately before the filing of the petition.

e. If the ~~proposed ward~~ <sup>child</sup> has no living parent, any individual nominated to act as fiduciary for the ~~proposed ward~~ <sup>child</sup> in a will or other written instrument that was executed by a parent of the ~~proposed ward~~ <sup>child</sup>.

f. If the ~~proposed ward~~ <sup>child</sup> is receiving any public services or benefits, the county department or, in a county having a population of 500,000 or more, the department that is providing the services or benefits.

g. The person representing the interests of the public under s. 48.09 of the county in which the petition is filed and, if the petition is filed in a county other than the county of the ~~proposed ward's~~ <sup>child's</sup> residence, the person representing the interests of the public of the county of the ~~proposed ward's~~ <sup>child's</sup> residence.

h. Any other person that the court may require.

of a child

2. For purposes of proceedings subsequent to an order for guardianship, any of the following:

(i) If the child is an Indian child, ~~the child's Indian custodian, the Indian child's tribe, and the Indian child's tribe~~ <sup>the child's Indian custodian, the Indian child's tribe, and the Indian child's tribe</sup>



⑨ d. IF the child is an Indian child, ~~as defined in 25 U.S.C. 1623-1624~~, the Indian child's tribe, ~~as defined in 25 U.S.C. 1903-1905~~.

- 1 a. The guardian. (child)
- 2 b. The parents of the ward.
- 3 c. The county of venue, through the person representing the interests of the
- 4 public under s. 48.09, if the county has an interest.

⑤ e. (1) Any other <sup>person</sup> individual that the court may require.

6 (b) ~~"Proposed ward" means a child for whom a petition for guardianship is filed.~~

7 (c) "Standby guardian" means an individual designated by the court under sub.

8 (d) whose appointment as guardian becomes effective immediately upon the death,  
9 unwillingness or inability to act, resignation, or removal by the court of the initially  
10 appointed guardian, or if the initially appointed guardian is temporarily unable to  
11 fulfill his or her duties. (7) ✓

12 (f) (1) "Successor guardian" means an individual appointed under sub. (8).

13 (e) <sup>a child</sup> "Ward" means an individual for whom a guardian has been appointed.

14 (2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY; IMMUNITY. (a) *Appointment.*

15 1. Except as provided in ss. 48.831, 48.977, and 48.978, this section may be used for  
16 the appointment of a guardian of the person for a child ~~and for the receipt and~~  
17 ~~acceptance of a foreign guardianship of the person of a child.~~ An appointment of a  
18 guardian of the estate of a child shall be conducted under the procedures specified  
19 in ch. 54. <sup>Unless the court orders otherwise.</sup>

20 2. The court may appoint coguardians of the person for a child under this  
21 section, subject to any conditions that the court imposes. ~~If coguardians are~~  
22 ~~appointed,~~ any decision concerning the child must be concurred in by all coguardians  
23 or is void. <sup>comma stays</sup>

24 (b) *Nomination by parent or child.* 1. A parent may nominate a guardian and  
25 successor guardian for any of his or her children who is in need of guardianship,

1 including a nomination by will. Subject to the rights of a surviving parent, the court  
2 shall appoint the person nominated as guardian or successor guardian, unless the  
3 court finds that appointment of the person nominated is not in the child's best  
4 interests.

5 2. A child who is 12 years of age or over may nominate his or her own guardian,  
6 but if the child is in the armed service or is outside of the state or if other good reason  
7 exists, the court may dispense with the child's right of nomination. If neither parent  
8 of a child who is 12 years of age or over is fit, willing, and able to be appointed  
9 guardian, the court may appoint the nominee of the child.

10 3. In determining who is appointed as guardian, the court shall consider the  
11 nominations of the parents and the proposed ward<sup>(child)</sup> and the opinions of the members  
12 of the proposed ward's family<sup>(parents and child)</sup> as to what is in the best interests of the proposed ward<sup>(child)</sup>,  
13 but the best interests of the proposed ward<sup>(child)</sup> as determined by the court shall control  
14 in making the determination when those nominations and opinions are in conflict  
15 with those best interests.

16 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.  
17 5., a guardian appointed under sub. (3) <sup>(a)</sup> shall have all of the duties and authority  
18 specified in s. 48.023, unless those duties and that authority are limited under subd.

19 2.

20 2. 'Limited guardianship.' The court may order that the duties and authority  
21 of a guardian appointed under sub. (3) <sup>(a)</sup> 2. be limited. The duties and authority of  
22 a limited guardian shall be as specified by the order of appointment under sub. (3)

23 (f) 2. The duties and authority of a full guardian shall apply to a limited guardian  
24 to the extent relevant to the duties or authority of the limited guardian, except as  
25 limited by the order of appointment. The court may limit the authority of guardian<sup>a</sup>

1 with respect to any power to allow the parent to retain such power to make decisions  
2 as is within the parent's ability to exercise effectively and may limit the physical  
3 custody of a guardian to allow shared physical custody with the parent if shared  
4 physical custody is in the best interests of the child. The court shall set an expiration  
5 date for a limited guardianship order, which may be extended for good cause shown.

6 3. 'Temporary guardianship.' If it is demonstrated to the court that a ~~proposed~~  
7 ~~ward's~~ <sup>child's</sup> particular situation, including the inability of the child's parent to provide for  
8 the care, custody, and control of the child for a temporary period of time, requires the  
9 appointment of a temporary guardian, the court may appoint a temporary guardian  
10 as provided under sub. (4).

11 4. 'Emergency guardianship.' If it is demonstrated to the court that the welfare  
12 of a ~~proposed ward~~ <sup>child</sup> requires the immediate appointment of an emergency guardian,  
13 the court may appoint an emergency guardian as provided under sub. (5).

14 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the  
15 parent as a result of the parent-child relationship that are not assigned to the  
16 guardian or otherwise limited by statute. A guardian acting on behalf of a ~~ward~~  
17 exercise only those powers that the guardian is authorized to exercise by statute or  
18 court order. The court may authorize a guardian to exercise only those powers that  
19 are necessary to provide for the care, custody, and control of the ~~ward~~ <sup>child</sup> and to exercise  
20 those powers in a manner that is appropriate to the ~~ward~~ <sup>child</sup>.

21 (d) ~~Immunity.~~ A guardian of a child is immune from civil liability for his or her  
22 acts or omissions in performing the duties of the guardianship if he or she performs  
23 the duties in good faith, in the best interests of the ward, and with the degree of  
24 diligence and prudence that an ordinarily prudent person exercises in his or her own  
25 affairs.

(3) PROCEDURES. (a) *Petition*. Any person, including a child 12 years of age or over on his or her own behalf, may petition for the appointment of a guardian for a child. A petition for guardianship may include an application for protective placement or protective services or both under ch. 55. The petition shall be entitled "In the interest of .... (child's name), a person under the age of 18" and shall state all of the following, if known to the petitioner:

1. The name, date of birth, and address of the child.

2. The names and addresses of the child's parents, current guardian and legal custodian, if any, proposed guardian, and all other interested persons.

3. Whether the petitioner is requesting a full guardianship <sup>or</sup> a limited guardianship. <sup>a temporary guardianship or an emergency guardianship</sup>

4. If the petitioner is requesting a full guardianship, the facts and circumstances establishing that the child's <sup>parents are</sup> ~~parent or current guardian is~~ unfit, unwilling, or unable to provide for the care, custody, and control of the child or of other compelling facts and circumstances demonstrating that a full guardianship is necessary. <sup>parents need</sup>

5. If the petitioner is requesting a limited guardianship, the facts and circumstances establishing that the child's <sup>ne</sup> ~~parent or current guardian needs~~ assistance in providing for the care, custody, and control of the child and a statement of the specific duties and authority under s. 48.023 sought by the petitioner for the proposed guardian and the specific parental rights and duties that the petitioner seeks to have transferred.

6. The facts and circumstances establishing that the proposed guardian is fit, willing, and able to serve as the child's guardian.

Insert

12-22

And, if the child may be subject to that act, the names and addresses of the child's Indian custodian, if any, and Indian tribe, if known, and

9. Whether the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act under ch. 822.

8. Whether the child may be subject to the federal Indian Child Welfare Act,

25 USC 1901 to 1963.

11. 9. Whether the petitioner is aware of any guardianship or other related proceeding involving the child that is pending in another state or county and, if so, the details of the guardianship or related proceeding.

(b) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (d) to be served at least 10 days before the time of the hearing upon all of the following persons:

a. The child if the child is 12 years of age or over, the child's guardian ad litem, and the child's counsel.

b. The child's parents and current guardian, legal custodian, and physical custodian.

c. The proposed guardian.

d. All other interested persons, unless specifically waived by the court.

e. Any other person that the court may require.

2. A notice shall be in writing. A copy of the petition and any other required document shall be attached to the notice. Unless otherwise provided, notice shall be delivered in person or by certified mail with return receipt requested. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last-known address of the recipient. Failure of the petitioner to provide notice to all interested persons shall deprive the court of jurisdiction unless receipt of notice is waived by the interested person or by the court under subd. 1. d.

3. If the child is an Indian child, notice to the Indian child's parents, as defined in 25 USC 1903 (9), Indian custodian, and Indian tribe shall be provided in the manner specified in 25 USC 1912 (a) and the time of the hearing under par. (d) shall be subject to 25 USC 1912 (a).

as to the proposed guardian's income, assets, debts, and living expenses,

(c) *Statement of acts by proposed guardian.* 1. At least 96 hours before the hearing under par. (a) the proposed guardian shall submit to the court a sworn and notarized statement as to the number of persons for whom the proposed guardian is responsible, whether as a parent, guardian, or legal custodian, and as to whether any of the following is true:

a. The proposed guardian is currently charged with or has been convicted of a crime or has been determined under s. 48.981 (3)(c) to have abused or neglected a child

b. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

c. Any license, certificate, permit, or registration of the proposed guardian that is required under chs. 440 to 480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.

d. The proposed guardian is listed under s. 146.40 (4g) (a) 2.

2. If subd. 1. ~~a. to d.~~ applies to the proposed guardian, he or she shall include in the sworn and notarized statement a description of the circumstances surrounding the applicable event under subd. 1. ~~a. to d.~~

*Hearing.* 1. The initial hearing on a petition for guardianship, other than a petition for temporary guardianship under sub. (4) or for emergency guardianship under sub. (5), shall be heard within 30 days after the filing of the petition. At the

hearing the court shall first determine whether any party wishes to contest the petition. If the petition is not contested, the court shall grant the disposition under

or if an adjournment is requested par. (1). If the petition is contested, the court shall set a date for a fact-finding and

dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing. ~~At the fact-finding and dispositional~~

hearing, the court shall hear evidence and argument relating to the allegations in

immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested

at the time specified or set by the court under this subdivision, at which any interested person may present described in subd. 3. may present

the petition. ~~If after hearing that evidence and those arguments the court determines that the allegations in the petition are proved by clear and convincing evidence and that appointment of the proposed guardian as the child's guardian is in the best interests of the child, the court shall grant the disposition under par. (f) 2. If after hearing that evidence and those arguments the court determines that the allegations in the petition are not proved by clear and convincing evidence or that appointment of the proposed guardian as the child's guardian is not in the best interests of the child, the court shall dismiss the petition under par. (f) 1.~~

Insert 15-8  
3. The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the court excuses the attendance of either or, for good cause shown, permits attendance by telephone. The child is not required to attend the hearing, but if the child has nominated the proposed guardian, the child shall provide to his or her guardian ad litem sufficient information for the guardian ad litem to advise the court whether the nomination is in the best interests of the child. An interested person may participate in the hearing on the petition ~~at the~~

~~court's discretion.~~ if the court determines that the interested person is a necessary party under 5-803.03

5-803.03  
(e) Dispositional factors. In determining the appropriate disposition under this section, the court shall consider all of the following: parents and child

1. Any nominations made under sub. (2) (b) 1. or 2. and the opinions of the proposed ward and the members of his or her family as to what is in the best interests of the proposed ward, but the best interests of the proposed ward as determined by the court shall control in making the determination when those nominations and opinions are in conflict with those best interests.

2. Whether the proposed guardian would be fit, willing, and able to serve as the guardian of the child.

→ 3. If the child is an Indian child, the order of placement preference under 25 USC 1915 (b) or, if applicable, 25 USC 1915 (c), 25 USC 1915 (b), 25 USC 1915 (c).

3. Whether appointment of the proposed guardian as the child's guardian is in the best interests of the child

*Disposition.* At the conclusion of the hearing under par. (4) the court shall grant one of the following dispositions:

1. A disposition dismissing the petition if the court determines that the allegations in the petition have not been proved by clear and convincing evidence or that appointment of the proposed guardian as the child's guardian is not in the best interests of the child.

2. A disposition ordering that the proposed guardian be appointed as the child's full guardian under sub. (2) (c) 1. *or temporary guardian under sub. (2) (c) 3.5* a limited guardian under sub. (2) (c) 2. if the court determines that the allegations in the petition have been proved by clear and convincing evidence and that such an appointment is in the best interests of the child. If the court orders the proposed guardian to be appointed as the child's guardian, the court shall issue letters of guardianship under the seal of the court to the guardian.

(4) TEMPORARY GUARDIANSHIPS. (a) *Standard.* If it is demonstrated to the court that a proposed ward's particular situation, including the inability of the child's parent to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian, the court may appoint a temporary guardian under this subsection.

(a) *Duration and extent of authority.* The court may appoint a temporary guardian for a child for a period not to exceed 180 days. ~~The court may impose no further temporary guardianship on the ward for at least 90 days after the expiration of the temporary guardianship.~~ The court's determination and order appointing the temporary guardian shall specify the authority of the temporary guardian and shall

~~which period may be extended once for a period not to exceed an additional 180 days~~

*except that the court may extend this period for good cause shown for one additional 180-day period*



A petition for the appointment of a temporary guardian shall be heard in the same manner and is subject to the same requirements as provided in this section for the appointment of a full ~~guard~~ or limited guardian.

be limited to those acts that are reasonably related to the reasons for appointment that are specified in the petition for temporary guardianship. The authority of the temporary guardian is limited to the performance of those acts stated in the order of appointment.

(b) ~~(c)~~ Procedures for appointment. All of the following procedures apply to the appointment of a temporary guardian.

1. Any person may petition for the appointment of a temporary guardian for a child. The petition shall contain the information required under sub. (3)(a), shall specify the reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian, and shall include a petition for appointment of a permanent guardian for the child or state why such a guardianship is not sought.

The petitioner shall give notice of the petition to the persons specified in sub.

(3)(b). The notice shall be served before or at the time the petition is filed or as soon after the filing of the petition as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship at any time under subd. 5. The petitioner shall serve notice of the order for hearing on the persons specified in sub. (3)(b) before the hearing or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the order for hearing.

2. The court shall appoint a guardian ad litem, who shall attempt to meet with the proposed ward before the hearing or as soon as is practicable after the hearing, but not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the temporary guardianship at the hearing or not later than 10 calendar days after the hearing.

2. The proposed temporary guardian shall submit to the court a statement required under sub. (3)(c). If required, the a court report shall be submitted to the court as provided under sub. (3)(d).

~~as provided under sub. (3)(c) and, after considering the factors under sub. (3)(f), shall grant a disposition under sub. (3)(g) or 2.~~

1 4. The court shall hold a hearing on the temporary guardianship. ~~The hearing~~  
2 ~~may be held no earlier than 48 hours after the filing of the petition unless good cause~~  
3 ~~is shown. The guardian ad litem shall attend the hearing in person or by telephone~~  
4 ~~or shall provide to the court a written report concerning the proposed ward for review~~  
5 ~~at the hearing.~~

6 5. If the court appoints a temporary guardian and if the ward, his or her  
7 counsel, the guardian ad litem, or an interested person requests, the court shall order  
8 a rehearing on the issue of appointment of the temporary guardian within 30  
9 calendar days after the request.

10 (c) ~~(d)~~ Cessation of powers. The duties and powers of the temporary guardian cease  
11 upon ~~the issuing of letters of permanent guardianship,~~ the expiration of the time  
12 period specified in par. ~~(b)~~ <sup>(a)</sup>, or the termination as determined by the court of the  
13 situation of the ~~ward~~ <sup>(ch. b)</sup> that was the cause of the temporary guardianship. Upon  
14 cessation of a temporary guardianship, the temporary guardian shall file with the  
15 court any report that the court requires. ~~Any action that has been commenced by the~~  
16 ~~temporary guardian may be prosecuted to final judgment by the successor or~~  
17 ~~successors in interest, if any.~~

18 (5) EMERGENCY GUARDIANSHIPS. (a) ~~Standard.~~ If it is demonstrated to the court  
19 that the welfare of a proposed ward requires the appointment of an emergency  
20 guardian, ~~the court may appoint an emergency guardian under this subsection~~

21 (a) ~~(b)~~ Duration and extent of authority. The court may appoint an emergency  
22 guardian for a child for a period not to exceed 60 days. The court's determination and  
23 order appointing the emergency guardian shall specify the authority of the  
24 emergency guardian and shall be limited to those acts that are reasonably related  
25 to the reasons for appointment that are specified in the petition for emergency

guardianship. The authority of the emergency guardian is limited to the performance of those acts stated in the order of appointment.

~~(1)~~ ~~(b)~~ *Procedures for appointment.* All of the following procedures apply to the appointment of an emergency guardian:

1. Any person may petition for the appointment of an emergency guardian for a child. The petition shall contain the information required under sub. (3) (a) shall specify the reasons for the appointment of an emergency guardian and the powers requested for the emergency guardian ~~and shall include a petition for appointment~~

~~of a temporary or permanent guardian for the child or state why such a guardianship is not sought.~~ *by the most practical means*

2. The petitioner shall give notice of the petition to the persons specified in sub.

~~(3) (b).~~ *and a copy of the petition* The notice shall be served before or at the time the petition is filed or as soon after the filing of the petition as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the emergency guardianship ~~at any time~~ under subd. 5. The petitioner shall serve notice of the ~~order for~~ hearing on the persons specified in sub. (3) (b) before the ~~hearing~~ *of the hearing* or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the ~~order for~~ hearing.

3. The court shall appoint a guardian ad litem as soon as possible after the filing of the petition. The court shall attempt to appoint the guardian ad litem before the hearing on the petition, but may appoint the guardian ad litem after the hearing if the court finds that exigent circumstances require the immediate appointment of an emergency guardian. The guardian ad litem shall attempt to meet with the ~~proposed~~ *child* ~~was~~ before the hearing or as soon as is practicable after the hearing, but not later

emergency

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① than 7 calendar days after the hearing. The guardian ad litem shall report to the  
 2 court on the advisability of the temporary guardianship at the hearing or not later  
 3 than 7 calendar days after the hearing.

4 4. The court shall hold a hearing on the emergency guardianship as soon as  
 5 possible after the filing of the petition. If appointed prior to the hearing, the guardian  
 6 ad litem shall attend the hearing in person or by telephone or shall provide to the  
 7 court a written report concerning the proposed ward for review at the hearing.

8 5. If the court appoints an emergency guardian and if the ward, his or her  
 9 counsel, the guardian ad litem, or an interested person requests, the court shall order  
 10 a rehearing on the issue of appointment of the emergency guardian within 30  
 11 calendar days after the request.

12 (a) Cessation of powers. The duties and powers of the emergency guardian  
 13 cease upon the issuing of letters of temporary or permanent guardianship, the  
 14 expiration of the time period specified in par. (b) or the termination as determined  
 15 by the court of the situation of the ward that was the cause of the emergency  
 16 guardianship. Upon cessation of an emergency guardianship, the emergency  
 17 guardian shall file with the court any report that the court requires.

18 Any action that  
 19 has been commenced by the emergency guardian may be prosecuted to final  
 20 judgment by the successor or successors in interest, if any.

21 (6) RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) Definitions. In this  
 22 subsection:

23 1. "Foreign court" means a court of a foreign state having competent  
 24 jurisdiction of a foreign ward.

25 2. "Foreign guardian" means a guardian appointed by a foreign court for a  
 foreign ward.

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petitions for reconsideration or modification of the emergency guardianship

1       3. "Foreign guardianship" means a guardianship issued by a foreign court.

2       4. "Foreign state" means a state other than this state.

3       5. "Foreign ward" means a child who is subject to a guardianship order or  
4 related order in a foreign state.

5       (b) *Petition.* A petition for the receipt and acceptance by this state of a foreign  
6 guardianship of a foreign ward who resides in this state or whose foreign guardian  
7 intends to become a resident of this state may include other petitions related to the  
8 foreign guardianship, such as a petition to modify the terms of the foreign  
9 guardianship, and shall include all of the following:

10       1. A certified copy of the foreign guardianship order that includes all  
11 attachments that describe the duties and powers of the foreign guardian and all  
12 amendments or modifications to the foreign guardianship order that were entered  
13 after issuance of the original foreign guardianship order, including any order to  
14 transfer the foreign guardianship.

15       2. The address of the foreign court that issued the foreign guardianship order.

16       3. A listing of any other guardianship petitions for the foreign ward that are  
17 pending or that have been filed in any jurisdiction at any time within 24 months  
18 before the filing of the petition under this paragraph and the names and addresses  
19 of the courts in which the petitions have been filed.

20       4. The petitioner's name, residence, current address, and any relationship of  
21 the petitioner to the foreign ward other than as foreign guardian.

22       5. The name, date of birth, principal residence, and current address of the  
23 foreign ward.

24       6. The names and addresses of the foreign ward's parents.

1        7. The name and address of any person other than the foreign guardian who  
2 is responsible for the care or custody of the foreign ward.

3        8. The name and address of any legal counsel of the foreign ward, including any  
4 guardian ad litem appointed by the foreign court.

5        9. The reason for the transfer of the foreign guardianship.

6        (c) *Notice of petition.* Notice of a petition for receipt and acceptance of a foreign  
7 guardianship shall be delivered in person or by certified mail with return receipt  
8 requested. Notice is considered to be given by proof of personal delivery or by proof  
9 that the notice was mailed to the last-known address of the recipient. Notice shall  
10 be served by the petitioner on all of the following:

11        1. The foreign ward, if 12 years of age or over, the foreign ward's guardian ad  
12 litem, and the foreign ward's counsel.

13        2. The foreign court from which the foreign guardianship is sought to be  
14 transferred. Notice under this subdivision shall include a request that the foreign  
15 court provide all of the following:

16        a. Certification that the foreign court has no knowledge that the foreign  
17 guardian has engaged in any acts specified in sub. (3) (c), failed to perform any duties  
18 of a guardian required by the foreign jurisdiction or the foreign court, or performed  
19 any acts prohibited to a guardian by the foreign jurisdiction or the foreign court.

20        b. Copies of all documents filed with the foreign court that are relevant to the  
21 foreign guardianship, including the initial petition for the foreign guardianship and  
22 other filed documents relevant to the appointment of the guardian; any reports and  
23 recommendations of any guardian ad litem or other individual appointed by the  
24 foreign court to evaluate the appropriateness of the foreign guardianship; any

1 periodic status reports on the condition of the foreign ward; and any order to transfer  
2 the foreign guardianship.

3 3. All other interested persons other than the foreign ward.

4 (d) *Jurisdiction.* Any of the following shall deprive the court of jurisdiction to  
5 hear the petition for receipt and acceptance of the foreign guardianship:

6 1. Failure by the petitioner to serve notice under par. (c).

7 2. Failure by the foreign court to provide the certifications and copies specified  
8 in par. (c) 2. a. and b. within 30 days after receipt of the notice under par. (c) or to give  
9 indication that the foreign court will comply with this subdivision within a  
10 reasonable period of time.

11 (e) *Hearing.* 1. If a motion for a hearing on a petition for receipt and acceptance  
12 of a foreign guardianship is made by the foreign ward, by a person who has received  
13 notice under par. (c) 3., or on the court's own motion, a hearing on the petition shall  
14 be heard within 90 days after the petition is filed.

15 2. If a petition for receipt and acceptance of a foreign guardianship includes a  
16 request to modify the provisions of the foreign guardianship, the petition shall be  
17 heard within 90 days after it is filed.

18 3. If a person receiving notice of the petition for receipt and acceptance of the  
19 foreign guardianship challenges the validity of the foreign guardianship or the  
20 authority of the foreign court to appoint the foreign guardian, the court may stay the  
21 proceeding under this subsection to afford the opportunity to the person to have the  
22 foreign court hear the challenge and determine its merits.

23 (f) *Presence at hearing.* 1. The petitioner shall be physically present at the  
24 hearing under par. (e) unless the court excuses the petitioner's attendance or, for  
25 good cause shown, permits attendance by telephone.

1           2. The petitioner shall ensure that the foreign ward attends the hearing unless  
2 the attendance is waived by the guardian ad litem.

3           (g) *Dismissal of petition.* If the court finds any of the following, the court shall  
4 dismiss the petition:

5           1. The foreign guardian is not presently in good standing with the foreign court.

6           2. The foreign guardian is moving or has moved the foreign ward from the  
7 foreign jurisdiction in order to avoid or circumvent the provisions of the foreign  
8 guardianship order.

9           3. The transfer of the foreign guardianship from the foreign jurisdiction is not  
10 in the best interests of the foreign ward.

11           (h) *Granting of petition.* The court shall grant a petition for receipt and  
12 acceptance of a foreign guardianship if the court finds all of the following:

13           1. That the foreign guardian is presently in good standing with the foreign  
14 court.

15           2. That the foreign guardian is not moving or has not moved the foreign ward  
16 from the foreign jurisdiction in order to avoid or circumvent the provisions of the  
17 foreign guardianship order.

18           3. That the transfer of the foreign guardianship from the foreign jurisdiction  
19 is in the best interests of the foreign ward.

20           (i) *Full faith and credit; modification.* In granting a petition under par. (h), the  
21 court shall give full faith and credit to the provisions of the foreign guardianship  
22 order, except that the court shall modify any provision of the foreign guardianship  
23 order as necessary to conform the foreign guardianship order to the requirements of  
24 this section and other requirements of this state.



(j) *Coordination with foreign court.* In granting the petition for receipt and acceptance of the foreign guardianship, the court shall coordinate with the foreign court the orderly transfer of the foreign guardianship and, in doing so, the court may do all of the following:

1. Delay the effective date of the receipt and acceptance of the foreign guardianship.

2. Make the receipt and acceptance of the foreign guardianship contingent upon the release or termination of the foreign guardianship and discharge of the foreign guardian under the foreign jurisdiction.

3. Recognize concurrent jurisdiction over the guardianship for a reasonable period of time to permit the foreign court to release or terminate the foreign guardianship and discharge the foreign guardian.

4. Make other arrangements that the court determines are necessary to effectuate the receipt and acceptance of the foreign guardianship.

(6) STANDBY GUARDIANSHIP. (a) *Petition.* A person may at any time bring a petition for the appointment of a standby guardian of a child, except that, as specified in s. 48.978 a petition for the appointment of a standby guardian on the person or estate or both of a child to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the child's parent may be brought under s. 48.978.

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(b) *Appointment.* At any hearing conducted under this subsection the court may designate one or more standby guardians whose appointment shall become effective immediately upon the death, unwillingness or inability to act, resignation, or removal by the court of the initially appointed guardian or during a period, as determined by the initially appointed guardian, when the initially appointed

guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship and of the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court. Upon notification, the court shall issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a temporary standby guardianship.

(1) (8) SUCCESSOR GUARDIAN. (a) *Appointment*. If a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this section for an original appointment of a guardian.

(b) *Notice*. If the appointment under par (a) is made without hearing, the successor guardian shall provide notice to the <sup>child</sup> ward and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the appointment of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

(8) (5) REVIEW OF CONDUCT OF GUARDIAN. (a) *Continuing jurisdiction of court*. The court that appointed the guardian of a child ~~or that granted a petition for acceptance and receipt of a foreign guardianship~~ has continuing jurisdiction over the guardian.

6. Fails to permit reasonable visitation with the child.

(b) Cause for court action against a guardian. The court has cause to impose a remedy under par. (d) if a guardian of a child does any of the following:

1. Abuses or neglects the child or knowingly permits others to do so.
2. Engages in self-dealing.
3. Fails to adequately provide for the personal needs of the child.
4. Fails to exercise due diligence and reasonable care in assuring that the child's personal needs are being met.
5. Fails to disclose information specified in sub. (3) (c) that would have prevented appointment of the person as guardian.

6. Fails to act in the best interests of the child.

7. Otherwise fails to perform any of his or her duties as a guardian.

under s. 48.023

(c) Procedure. Any person may file a petition requesting a review of the conduct of a guardian or the court, on its own motion, may propose such a review. The request or court proposal shall allege facts sufficient to show cause under par. (b) for the court to impose a remedy under par. (d). The court shall hold a hearing on the request or proposal not less than 10, nor more than 60 days after the filing of the request or proposal. Not less than 7 days before the date of the hearing, the court shall cause notice of the hearing to be provided to the child, his or her or parents, the guardian, and any other persons as determined by the court. A copy of the request or proposal shall be attached to the notice.

(d) Remedies of the court. If after hearing the court finds by clear and convincing evidence cause as specified in par. (b) to impose a remedy under this paragraph, the court may do any of the following:

1. Remove the guardian.

including an order setting reasonable rules of visitation with the child

2. Enter any other order that may be necessary or appropriate to compel the guardian to ~~act in the best interests of the ward or to otherwise~~ carry out the guardian's duties.

3. Require the guardian to pay any costs of the proceeding, including costs of service and attorney fees.

(9) ~~(10)~~ TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* Unless the court order entered under sub. (3) ~~(4)~~ 2., (4), (5), ~~(6)~~ ~~(7)~~ specifies that a guardianship under this section be for a lesser period of time, a guardianship under this section shall continue until the child attains the age of 18 years unless any of the following occurs:

1. The child marries.
2. The child dies.
3. The child changes residence from this state to another state and a guardian is appointed in the new state of residence.
4. The guardian ~~resign~~ and the resignation is accepted by the court.
5. The guardian is removed for cause under sub. ~~(9)~~ (d) 1.
6. The court terminates the guardianship on the request of a parent of the child under par. (b).

(b) *Termination on request of parent.* 1. A parent of the child may file a petition requesting that a guardianship order entered under sub. (3) ~~(4)~~ 2., (4), (5), ~~(6)~~ ~~(7)~~ be terminated. The petition shall allege facts sufficient to show that ~~the parent has remedied the unfitness, unwillingness, or inability to provide for the care, custody, and control of the child or other compelling facts and circumstances on which the guardianship was granted,~~ that the parent is ~~now~~ fit, willing, and able to carry out

there has been a substantial change in circumstances since the last order affecting the guardianship was entered

1 the duties of a guardian, and that termination of the guardianship would be in the  
2 best interests of the child.

3 2. The court shall hold a hearing on the petition unless written waivers of  
4 objections to termination of the guardianship are signed by the child, by his or her  
5 counsel or guardian ad litem, the parents, and the guardian and the court approves  
6 the waivers.

7 3. If a hearing is to be held, by no less than 7 days before the date of the hearing  
8 the court shall cause notice of the hearing to be provided to the child, his or her  
9 parents, the guardian, and any other persons as determined by the court. A copy of  
10 the request or proposal shall be attached to the notice. The court shall terminate the  
11 guardianship if the court finds that it has been proved by clear and convincing  
12 evidence that the parent has remedied the unfitness, unwillingness, or inability to  
13 provide for the care, custody, and control of the child or other compelling facts and  
14 circumstances on which the guardianship was granted and that the parent is now  
15 fit, willing, and able to carry out the duties of a guardian and if the court determines  
16 that termination of the guardianship would be in the best interests of the child.

17 **SECTION 20.** 48.977 (8) of the statutes is amended to read:

18 48.977 (8) ~~RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS~~ OTHER GUARDIANSHIP  
19 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian  
20 appointed under s. 48.976, ch. 54, 2007 stats., or ch. 880, 2003 stats.

21 (b) Nothing in this section prohibits an individual from petitioning a court  
22 under ~~ch. 54 s. 48.976~~ for appointment of a guardian.

23 **SECTION 21.** 48.978 (7) of the statutes is amended to read:

24 48.978 (7) ~~RELATIONSHIP TO CH. 54~~ OTHER GUARDIANSHIP PROCEDURES. (a) Except  
25 when a different right, remedy, or procedure is provided under this section, the

Insert  
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1 rights, remedies, and procedures provided in s. 48.976 or ch. 54, whichever is  
2 applicable, shall govern a standby guardianship created under this section.

3 (b) This section does not abridge the duties or authority of a guardian appointed  
4 under s. 48.976, ch. 880, 2003 stats., or ch. 54.

5 (c) Nothing in this section prohibits an individual from petitioning a court for  
6 the appointment of a guardian of the person under s. 48.976 or a guardian of the  
7 estate under ch. 54.

8 **SECTION 22.** 48.979 of the statutes is created to read:

9 **48.979 Delegation of power by parent, guardian, or legal custodian.** A  
10 parent, guardian, or legal custodian of a child, by a properly executed power of  
11 attorney, may delegate to another person, for a period not exceeding one year, any  
12 of his or her powers regarding the care and custody of the child, except the power to  
13 consent to the marriage or adoption of the child.  
30-13

14 **SECTION 23.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

15 51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62  
16 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the  
17 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a  
18 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
19 or for whom a guardian of the person is appointed under, ~~or~~ s. 48.976, s. 54.10, 2007  
20 stats., or s. 880.33, 2003 stats.

21 **SECTION 24.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

22 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed  
23 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
24 developmental disability who has a parent or has a guardian appointed under s.  
25 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33,

1 2003 stats., information concerning the patient that is obtainable by staff members  
2 of the agency or nonprofit corporation with which the agency has contracted is  
3 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,  
4 if any; the name, birth date and county of residence of the patient; information  
5 regarding whether the patient was voluntarily admitted, involuntarily committed  
6 or protectively placed and the date and place of admission, placement or  
7 commitment; and the name, address and telephone number of the guardian of the  
8 patient and the date and place of the guardian's appointment or, if the patient is a  
9 minor with developmental disability who has a parent or has a guardian appointed  
10 under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or  
11 s. 880.33, 2003 stats., the name, address and telephone number of the parent or  
12 guardian appointed under s. 48.831 of the patient.

13 **SECTION 25.** 54.01 (10) of the statutes is amended to read:

14 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to  
15 manage the income and assets and provide for the essential requirements for health  
16 and safety and the personal needs of ~~a minor~~, an individual found incompetent, or  
17 a spendthrift or to manage the income and assets of a minor.

18 **SECTION 26.** 54.10 (1) of the statutes is amended to read:

19 54.10 (1) A court may appoint ~~a guardian of the person or~~ a guardian of the  
20 estate, ~~or both~~, for an individual if the court determines that the individual is a  
21 minor. Except as provided in ss. 48.831, 48.977, and 48.978, an appointment of a  
22 guardian of the person of a minor shall be conducted under the procedures specified  
23 in s. 48.976.

24 **SECTION 27.** 54.52 (1) of the statutes is amended to read:

1           54.52 (1) A person may at any time bring a petition for the appointment of a  
2 standby guardian of the person or estate of an individual who is determined under  
3 s. 54.10 to be incompetent, ~~a minor~~, or a spendthrift or for the appointment of a  
4 standby guardian of the estate of a minor, except that, as specified in s. ~~48.97~~ 48.978  
5 a petition for the appointment of a standby guardian of the person or ~~property estate~~,  
6 or both, of a minor to assume the duty and authority of guardianship on the  
7 incapacity, death, or debilitation and consent, of the minor's parent may be brought  
8 under s. 48.978. (10)

9           **SECTION 28.** 54.56 of the statutes is renumbered 48.976 (11) and amended to  
10 read: (10)

11           48.976 (11) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS. (a)  
12 In this section subsection, "stepparent" means the surviving spouse of a deceased  
13 parent of a ~~minor child~~, whether or not the surviving spouse has remarried.

14           (b) If one or both parents of a ~~minor child~~ are deceased and the ~~minor child~~ is  
15 in the custody of the surviving parent or any other person, a grandparent or  
16 stepparent of the ~~minor child~~ may petition for visitation privileges with respect to the  
17 ~~minor child~~, whether or not the person with custody is married. The grandparent  
18 or stepparent may file the petition in a guardianship or temporary guardianship  
19 proceeding under this ~~chapter section~~ that affects the minor child or may file the  
20 petition to commence an independent action under this ~~chapter subsection~~. Except  
21 as provided in ~~sub. (3m) par. (cm)~~, the court may grant reasonable visitation  
22 privileges to the grandparent or stepparent if the surviving parent or other person  
23 who has custody of the ~~minor child~~ has notice of the hearing and if the court  
24 determines that visitation is in the best interest of the ~~minor child~~.



1 (c) Whenever possible, in making a determination under ~~sub. (2)~~ par. (b), the  
2 court shall consider the wishes of the ~~minor~~ child.

3 (cm) 1. Except as provided in ~~par. (b)~~ subd. 2., the court may not grant visitation  
4 privileges to a grandparent or stepparent under this ~~section~~ subsection if the  
5 grandparent or stepparent has been convicted under s. 940.01 of the first-degree  
6 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of  
7 a parent of the ~~minor~~ child, and the conviction has not been reversed, set aside, or  
8 vacated.

9 2. Paragraph (a) Subdivision 1. does not apply if the court determines by clear  
10 and convincing evidence that the visitation would be in the best interests of the ~~minor~~  
11 child. The court shall consider the wishes of the ~~minor~~ child in making the  
12 determination.

13 (d) The court may issue any necessary order to enforce a visitation order that  
14 is granted under this ~~section~~ subsection, and may from time to time modify the  
15 visitation privileges or enforcement order for good cause shown.

16 (dm) 1. If a grandparent or stepparent granted visitation privileges with  
17 respect to a ~~minor~~ child under this ~~section~~ subsection is convicted under s. 940.01 of  
18 the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree  
19 intentional homicide, of a parent of the ~~minor~~ child, and the conviction has not been  
20 reversed, set aside, or vacated, the court shall modify the visitation order by denying  
21 visitation with the ~~minor~~ child upon petition, motion, or order to show cause by a  
22 person having custody of the ~~minor~~ child, or upon the court's own motion, and upon  
23 notice to the grandparent or stepparent granted visitation privileges.

24 2. Paragraph (a) Subdivision 1. does not apply if the court determines by clear  
25 and convincing evidence that the visitation would be in the best interests of the ~~minor~~

1 child. The court shall consider the wishes of the minor child in making the  
2 determination.

3 (e) This section applies to every minor child in this state whose parent or  
4 parents are deceased, regardless of the date of death of the parent or parents.

5 **SECTION 29.** 54.57 of the statutes is renumbered 48.976 (11) and amended to  
6 read:

7 48.976 (11) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF ~~A~~ PARENT KILLS  
8 OTHER PARENT. (a) Except as provided in sub. (2), ~~in an action under this chapter that~~  
9 ~~affects a minor par. (b),~~ a court may not grant to a parent of the minor a child who  
10 is the subject of a proceeding under this section visitation or physical placement  
11 rights with the minor child if the parent has been convicted under s. 940.01 of the  
12 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional  
13 homicide, of the minor's child's other parent, and the conviction has not been  
14 reversed, set aside, or vacated.

15 (b) ~~Subsection (1) Paragraph (a)~~ does not apply if the court determines by clear  
16 and convincing evidence that visitation or periods of physical placement would be in  
17 the best interests of the minor child. The court shall consider the wishes of the minor  
18 child in making the determination.

19 **SECTION 30.** 55.03 (1) of the statutes is amended to read:

20 55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting  
21 as a guardian appointed under s. 48.976, ch. 880, 2003 stats., or ch. 54, 2007 stats.,  
22 may be a provider of protective services or protective placement for its ward under  
23 this chapter.

24 **SECTION 31.** 115.76 (12) (b) 2. of the statutes is amended to read:

Insert  
34-23

1           115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was  
2           made a ward of the state, county, or child welfare agency under ch. 54, 2007 stats.,  
3           or ch. 880, 2003 stats., or if a child has been placed in the legal custody or  
4           guardianship of the state, county, or child welfare agency under ch. 48 or ~~ch.~~ 767.

5           **SECTION 32.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

6           146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62  
7           (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the  
8           meaning given in s. 48.02 (13), except that "parent" does not include the parent of a  
9           minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
10          or for whom a guardian of the person is appointed under s. 48.976, s. 54.10, 2007  
11          stats., or s. 880.33, 2003 stats.

12          **SECTION 33.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

13          146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed  
14          under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
15          developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a  
16          guardian appointed under s. 48.831 and does not have a guardian appointed under  
17          s. 48.976 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that  
18          is obtainable by staff members of the agency or nonprofit corporation with which the  
19          agency has contracted is limited, except as provided in subd. 9. e., to the nature of  
20          an alleged rights violation, if any; the name, birth date and county of residence of the  
21          patient; information regarding whether the patient was voluntarily admitted,  
22          involuntarily committed or protectively placed and the date and place of admission,  
23          placement or commitment; and the name, address and telephone number of the  
24          guardian of the patient and the date and place of the guardian's appointment or, if  
25          the patient is a minor with developmental disability who has a parent or has a

guardian appointed under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

**SECTION 34.** 757.69 (1m) (e) of the statutes is amended to read:

757.69 (1m) (e) Conduct hearings, make findings, or issue orders in proceedings under s. 48.976, 48.977, or 48.978.

**SECTION 35.** 808.075 (4) (a) 9m. of the statutes is created to read:

808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.976 (8).

**SECTION 36.** 808.075 (4) (a) 11. of the statutes is amended to read: (9) ← scored

808.075 (4) (a) 11. Termination of guardianship under s. 48.976 (9) or 48.977 (7), including removal of a guardian.

**SECTION 37.** 808.075 (4) (a) 13. of the statutes is created to read: (7)

808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.976 (8).

**SECTION 38.** 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14. and amended to read: score → (10) ✓

808.075 (4) (a) 14. Order for visitation under s. ~~54.56~~ 48.976 (10).

**SECTION 39.** 814.66 (1) (m) of the statutes is amended to read: (10) ✓

814.66 (1) (m) For filing a petition under s. ~~54.56~~ 48.976 (10), whether in a guardianship or temporary guardianship proceeding or to commence an independent action, \$60.

**SECTION 40.** 938.02 (8) of the statutes is amended to read:

938.02 (8) "Guardian" means the person named by the court having the duty and authority of guardianship guardian of the person of a juvenile.

**SECTION 41.** 938.345 (1) (e) of the statutes is amended to read:

*and shall be considered guardianships*

938.345 (1) (e) Place any juvenile not found under ch. 880, 2003 stats., or ch. 46, 48, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively treats one or more of those categories of juveniles.

*Under section 48.976 of the statutes, as created by this act,*

#### **SECTION 42. Nonstatutory provisions.**

*Immediately before*

(1) TRANSITION. Notwithstanding the treatment of sections 54.01 (10) and 54.10 (1) of the statutes by this act, all guardianships of the person of a minor under section 54.10, 2007 stats., in effect ~~on~~ the effective date of this subsection remain in effect, until terminated by court order under section 48.976 <sup>(9)</sup> ~~(10)~~ of the statutes, as created by this act, ~~or removed by court order under section 48.976 (9) (d) 1. of the statutes,~~

~~as created by this act,~~ all matters commenced under ch. 54, 2007 stats., with respect to a guardianship of the person of a minor that are pending on the effective date of this subsection shall be completed under ch. 54, 2007 stats.

*Period stays*

*Considered guardianships*

#### **SECTION 43. Initial applicability.**

*Under section 48.976 of the statutes, as created by this act,*

(1) PETITIONS FOR GUARDIANSHIP. Except as provided in subsection (2), this act first applies to a petition for full, limited, temporary, emergency, standby, or successor guardianship ~~or a petition for the receipt and acceptance of a foreign guardianship~~ filed on the effective date of this subsection.

(2) DUTIES AND AUTHORITY OF GUARDIAN OF THE PERSON. The treatment of sections 48.023 (intro.), (3), and (4) and 48.976 (2) (c) 5. of the statutes first applies to a guardianship of the person of a minor in effect on the effective date of this subsection.

#### **SECTION 44. Effective date.**

(1) GUARDIANSHIPS OF CHILDREN. This act takes effect on the first day of the 6th month beginning after publication.

(END)

*, and all orders appointing a guardian of the person of a minor under ch. 54, 2007 stats., entered beginning on the effective date of this subsection shall be considered guardianships under section 48.976 of the statutes, as created by this act.*

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

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(INSERT 12-22)

1           6. If the petitioner is requesting a temporary guardianship, the facts and  
2           circumstances establishing that the child's particular situation, including the  
3           inability of the child's parents to provide for the care, custody, and control of the child  
4           for a temporary period of time, requires the appointment of a temporary guardian;  
5           the reasons for the appointment of a temporary guardian; and the powers requested  
6           for the temporary guardian.

7           7. If the petitioner is requesting an emergency guardianship, the facts and  
8           circumstances establishing that the welfare of the child requires the immediate  
9           appointment of an emergency guardian.

(END OF INSERT)

(INSERT 13-4)

10           ⑩. Whether the child may be subject to the federal Indian Child Welfare Act,  
11           25 USC 1901 to 1963 and, if the child may be subject to that act, the names and  
12           addresses of the child's Indian custodian, if any, and Indian tribe, if known, and  
13           reliable and credible information showing that continued custody of the child by the  
14           child's parents, as defined in 25 USC 1903 (9), or Indian custodian is likely to result  
15           in serious emotional or physical damage to the child under 25 USC 1912 (e) and that  
16           active efforts under 25 USC 1912 (d) have been made to prevent the breakup of the  
17           Indian child's family and that those efforts have proved unsuccessful.

(END OF INSERT)

(INSERT 15-8)

18           2. If the petition is contested, if any interested person described in subd. ③.  
19           requests, or on the court's own motion, the court shall order the county department,

1 a licensed child welfare agency, or, in a county having a population of 500,000 or  
2 more, the department<sup>✓</sup> or an agency under contract with the department to conduct  
3 an investigation to determine whether the child is a proper subject for guardianship  
4 and whether the proposed guardian's home is suitable for the child. The person  
5 conducting the investigation shall file a report of its investigation with the court at  
6 least 96 hours before the fact-finding and dispositional hearing. The parents of the  
7 child and the proposed guardian shall reimburse the person conducting the  
8 investigation for the cost of the investigation according to a fee schedule established  
9 by the department based on ability to pay.

(END OF INSERT)

(INSERT 20-11)

10 (c) *Immunity.* An emergency guardian of a child is immune from civil liability  
11 for his or her acts or omissions in performing the duties of emergency guardianship  
12 if he or she performs the duties in good faith, in the best interests of the child, and  
13 with the degree of diligence and prudence that an ordinarily prudent person  
14 exercises in his or her own affairs. ✓

(END OF INSERT)

(INSERT 29-16)

15 **SECTION 1.** 48.977 (2) (a) of the statutes is amended to read:

16 48.977 (2) (a) That the child has been adjudged to be in need of protection or  
17 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or  
18 (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her  
19 home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365,  
20 938.345, 938.357, 938.363, or 938.365 ~~or~~, that the child has been so adjudged and

1 placement of the child in the home of a guardian under this section has been  
2 recommended under s. 48.33 (1) or 938.33 (1), or that the child has had a guardian  
3 of the person appointed for him or her under ch. 54, 2007 stats., and is placed in the  
4 home of the guardian.

or ch. 880, 2003 stats.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77.

5 **SECTION 2.** 48.977 (2) (f) of the statutes is amended to read:

6 48.977 (2) (f) That the agency primarily responsible for providing services to  
7 the child under a court order has made reasonable efforts to make it possible for the  
8 child to return to his or her home, while assuring that the child's health and safety  
9 are the paramount concerns, but that reunification of the child with the child's  
10 parent or parents is unlikely or contrary to the best interests of the child and that  
11 further reunification efforts are unlikely to be made or are contrary to the best  
12 interests of the child or that the agency primarily responsible for providing services  
13 to the child under a court order has made reasonable efforts to prevent the removal  
14 of the child from his or her home, while assuring the child's health and safety, but that  
15 continued placement of the child in the home would be contrary to the welfare of the  
16 child, except that the court is not required to find that the agency has made those  
17 reasonable efforts with respect to a parent of the child if any of the circumstances  
18 specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the  
19 findings specified in this paragraph on a case-by-case basis based on circumstances  
20 specific to the child and shall document or reference the specific information on  
21 which those findings are based in the guardianship order. A guardianship order that  
22 merely references this paragraph without documenting or referencing that specific  
23 information in the order or an amended guardianship order that retroactively  
24 corrects an earlier guardianship order that does not comply with this paragraph is



not sufficient to comply with this paragraph. This paragraph does not apply to a child who is placed in the home of a guardian under ch. 54, 2007 stats., and who is not receiving services from an agency under a court order.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77.

(END OF INSERT)

or ch. 880, 2003 stats.

(INSERT 30-13)

SECTION 3. 49.32 (1) (am) of the statutes is amended to read:

49.32 (1) (am) Paragraph (a) does not prevent the department or a county department under s. 46.22 or 46.23 from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7) or the cost of guardianship investigations as authorized under s. 48.876 (3) (d) 2.

History: 1995 a. 27 ss. 2035 to 2037, 2276d, 2805 to 2809, 2927 to 2930, 3146 to 3149; 1995 a. 289, 361, 370, 404; 1997 a. 27, 35, 237, 252, 283; 2001 a. 16; 2003 a. 33; 2007 a. 20 ss. 1483 to 1491, 9121 (6) (a).

(END OF INSERT)

involving protective placement or protective services for an adult, and s. 48.976 and the following provisions apply to all hearings under this chapter involving protective placement or protective services for a minor.

SECTION 4. 55.10 (4) (intro.) of the statutes is amended to read:

55.10 (4) RIGHTS. (intro.) Sections 54.42, 54.44, and 54.46 apply to all hearings under this chapter involving protective placement or protective services for an adult. s. 48.976 applies to all hearings under this chapter involving protective placement or protective services for a minor, and the following provisions apply to all hearings under this chapter, except transfers of placement under s. 55.15 and summary hearings under ss. 55.18 (3) (d) and 55.19 (3) (d):

History: 2005 a. 264 ss. 128, 129, 130, 160; 2005 a. 387 s. 116; 2007 a. 20, 45; s. 13.92 (2) (i).

SECTION 5. 55.10 (4) (a) of the statutes is amended to read:

55.10 (4) (a) Counsel. The individual sought to be protected has the right to counsel whether or not the individual is present at the hearing on the petition. The

1 court shall require representation by full legal counsel whenever the petition alleges  
2 that the individual is not competent to refuse psychotropic medication under s. 55.14,  
3 the individual sought to be protected requested such representation at least 72 hours  
4 before the hearing, the guardian ad litem or any other person states that the  
5 individual sought to be protected is opposed to the petition, or the court determines  
6 that the interests of justice require it. If the individual sought to be protected or any  
7 other person on his or her behalf requests but is unable to obtain legal counsel, the  
8 court shall refer the individual to the state public defender as provided under s.  
9 55.105 for appointment of legal counsel. If the individual sought to be protected is  
10 represented by counsel appointed under s. 977.08 in a proceeding for the  
11 appointment of a guardian under s. 48.976 or ch. 54, the court shall order the counsel  
12 appointed under s. 977.08 to represent under this section the individual sought to  
13 be protected.

NOTE: NOTE: Par. (a) is shown as affected by 2 acts of the 2007 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). NOTE:

History: 2005 a. 264 ss. 128, 129, 130, 160; 2005 a. 387 s. 116; 2007 a. 20, 45; s. 13.92 (2) (i).

(END OF INSERT)

(INSERT 36-3)

14 **SECTION 6.** 214.37 (4) (k) 1. of the statutes is amended to read:

15 214.37 (4) (k) 1. An affidavit stating that the person has standing under s.  
16 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment  
17 of a decedent's estate or that the person is an heir of the decedent, or was guardian,  
18 as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the decedent  
19 at the time of the decedent's death, and may obtain transfer of property of a decedent  
20 under s. 867.03.

History: 1991 a. 221; 1995 a. 27; 1997 a. 27; 1999 a. 94; 2005 a. 387.

21 **SECTION 7.** 215.26 (8) (e) 1. of the statutes is amended to read:

1           215.26 (8) (e) 1. Submits an affidavit stating that the person has standing  
2           under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or  
3           assignment of a decedent's estate or that the person is an heir of the decedent, or was  
4           guardian, as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the  
5           decedent at the time of the decedent's death, and may obtain transfer of property of  
6           a decedent under s. 867.03; and

**History:** 1971 c. 229; 1973 c. 291; 1975 c. 359 s. 16; 1975 c. 421; 1977 c. 140; 1977 c. 187 s. 135; 1979 c. 32 s. 92 (6); 1981 c. 192; 1983 a. 167 ss. 43, 44, 112; 1983 a. 192 s. 304; 1983 a. 268; 1989 a. 313; 1991 a. 78, 280, 316; 1993 a. 425, 481; 1995 a. 27, 104, 336, 400; 1997 a. 27; 1999 a. 94; 2003 a. 262; 2005 a. 155, 387; 2005 a. 443 s. 265.

(END OF INSERT)